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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DOMONICK TERRELL BIRDSONG,

Defendant and Appellant.

E063348

(Super.Ct.No. FWV1202999)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jon D. Ferguson,
Judge. Affirmed.

Correen Ferrentino, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

A jury found defendant and appellant Domonick Terrell Birdsong guilty of second degree robbery (Pen. Code,¹ § 211, count 1) and assault with a deadly weapon (§ 245, subd. (a)(1), count 2). The jury also found true the allegations that defendant personally used a firearm in the commission of count 1 (§ 12022.53, subd. (b)) and count 2 (§ 12022.5, subds. (a) & (d)). At the sentencing hearing, a trial court found several aggravating factors, including that the victim was particularly vulnerable, defendant occupied a position of leadership in the crime, the crime showed planning and sophistication, defendant was on two grants of probation at the time the offense was committed, and defendant struck the victim with a weapon gratuitously. The court then sentenced defendant to the aggravated term of five years on count 1, plus 10 years on the firearm enhancement. (§ 12022.53, subd. (b).) The court imposed the midterm on count 2 and its firearm enhancement (§ 12022.5, subd. (a)), but stayed those terms pursuant to section 654.

Defendant now appeals. We affirm.

FACTUAL BACKGROUND

On September 16, 2012, after Frank M. (the victim) played soccer and had a beer with his friends, he drove home to his apartment. He pulled into his garage and parked his car. A man opened the victim's car door, put a gun to his head, and demanded his phone, wallet, and money. While holding the gun to the victim's temple, the man pulled a chain necklace off his neck. The victim told the man his money was in the trunk

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

because he wanted to get something to defend himself. The victim got out of the car and opened the trunk. The man still had his gun on the victim, and he asked the victim what he was going to do. The victim said, “nothing,” and then said his money was in his bag on the backseat. At that point, the victim noticed a second man go inside the car and take his bag from the backseat. He also took the pizzas and sodas the victim had brought home for his kids. The first man hit the victim on the side of the head with the gun, and the two men left.

The victim later identified defendant in a photographic lineup as the man with the gun. He also identified defendant in court.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potential arguable issue: whether the court properly imposed the aggravated term as to count 1. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.